

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 18TH JANUARY 2007 / 28TH POUSHA 1928

WP(C).No. 22714 of 2006(D)

PETITIONER:

C.THOMASKUTTY, S/O.CHACKO,
AGED 49 YEARS, DRIVER SPECIAL GRADE, KSRTC,
KOTTARAKKARA AND RESIDING AT "REVATHI NIVAS",
THAMARAKUDY.P.O., KALAYAPURAM VIA.,
KOTTARAKKARA.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

1. THE KERALA STATE ROAD TRANSPORT
CORPORATION,
REP. BY ITS MANAGING DIRECTOR,
TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM.
2. THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C., KOTTARAKKARA.
3. SHRI.K.ADUL REHIMAN,
VEHICLE SUPERVISOR, KSRTC,
THAMARASSERY.
4. SHRI JOHN PHILIP,
VEHICLE SUPERVISOR,
KSRTC, KOTTARAKKARA.
5. SHRI P.USHMAN,
VEHICLE SUSPERSVISOR,
KSRTC, KALPETTA.

R1 & R2 BY ADV. SRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ADVICE MEMO DATED 4.11.1982.

EXT.P2 – TRUE COPY OF MEMO DT.10.1.83 ISSUED BY THE PERSONNEL OFFICER, OFFICE OF THE GENERAL MANAGER, KSRTC., TRIVANDRUM.

EXT.P3 – TRUE COPY OF APPOINTMENT ORDER DT.14.4.83 ISSUED BY THE DIST. TRANSPORT OFFICER, TRIVANDRUM

EXT.P4 – TRUE COPY OF THE MEMORANDUM DT.23.11.85 ISSUED BY THE DIST. TRANSPORT OFFICER, KOTTARAKKARA.

EXT.P5 – TRUE COPY OF DRIVERS' GRADATION LIST AS ON 1.4.2000

EXT.P6 – TRUE COPY OF MEMORANDUM DT.8.6.2006.

EXT.P7 – TRUE COPY OF DO DT.21.7.06.

EXT.P8 – TRUE COPY OF REPRESENTATION DT.11.8.06 SUBMITTED BY PETR. TO THE 1ST RESPONDENT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.22714 OF 2006
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DATED THIS THE 18TH JANUARY, 2007

J U D G M E N T

The petitioner who claims to be one of the seniormost Special Grade Driver in the service of the 1st respondent-K.S.R.T.C. is aggrieved in that respondents 3, 4 and 5 who were far juniors to him have been promoted as Vehicle Supervisors even as he remains as a Special Grade Driver. Ext.P1 is the copy of P.S.C. advice memo received by the petitioner and Ext.P2 is copy of the memo issued by the K.S.R.T.C. directing him to report at the Training School as a Reserve Driver. Ext.P3 is copy of the regular appointment order. The petitioner states that on completion of 240 days, he was appointed as Driver Grade II which is the entry cadre for drivers. Ext.P4 is copy of the memorandum given to the petitioner in that regard. He was subsequently promoted as Driver Grade I and ultimately as Driver Special Grade in the year 2001. The next promotion post which the petitioner can aspire for is that of Vehicle Supervisor.

2. Ext.P5 produced by the petitioner is copy of the Drivers' Gradation list in the K.S.R.T.C. as on 1.4.2000. The petitioner points out that going by Ext.P5, his serial number is 1562 and rank number is 1762 while that of the party-respondents are far below that of the

petitioner. He relies on Ext.P5 to establish that all the party-respondents are juniors to him. The petitioner complains that even as he was expecting his promotion to the post of Vehicle Supervisor since there were a number of vacancies available, he was surprised to find that his juniors, respondents 3, 4 and 5 were promoted. Ext.P6 dated 8.6.2006 is copy of the Memorandum by which respondents 3 and 4 were promoted and Ext.P7 dated 21.7.2006 is copy of the Memorandum by which the 5th respondent was promoted. Voicing his grievances, the petitioner submitted Ext.P8 representation dated 11.8.2006 which is not of any avail so far. He points out that the gradation list of 1.4.1988 which is referred to in Exts.P6 and P7 were non-existent since Ext.P5 gradation list of 1.4.2000 had already been issued superseding earlier gradation lists. He points out that there is no judicial or disciplinary proceedings initiated or pending against him and therefore his seniority as per Rule 27(c), Part-II of the K.S. & S.S.R. ought not to have been ignored and he should have been promoted even before his juniors like respondents 3, 4 and 5 were given promotion. Raising various grounds, the writ petitioner has filed this Writ Petition seeking the following reliefs:-

1. declare that Exts.P6 and P7 are unsustainable in the eye of

law in so far as denial of promotion to the post of Vehicle Supervisor to the petitioner is concerned;

2. issue a writ of certiorari or appropriate writ or order or direction to quash Exts.P6 and P7;

3. declare that the petitioner is entitled to be promoted to the post of Vehicle Supervisor before any of his juniors like respondents 3 to 5 are promoted;

4. issue a writ of mandamus or appropriate writ or order or direction to the 1st respondent to issue necessary orders of promotion to the post of Vehicle Supervisor to the petitioner w.e.f. the date on which the juniors like the 3rd respondent onwards were promoted, with all consequential benefits and to create supernumerary post or to revert juniors if necessary.

3. On behalf of the K.S.R.T.C., a counter affidavit has been filed by its Deputy Law Officer. It is conceded therein that the petitioner is a permanent Driver in the K.S.R.T.C. and was advised by the Public Service Commission on the basis of advice list dated 4.11.1982. On receiving appointment order the petitioner reported for duty without delay. It is also conceded that the rank which is assigned as per the gradation list is 1762. The petitioner's claims of having received grade

promotions are also not disputed. Answering the grounds raised by the petitioner, it is contended in para.5 of the counter affidavit that according to the conciliation agreement dated 2.2.1987 which was adopted in the K.S.R.T.C., ratio promotion was substituted by grade promotion in all categories and each and every employee has to complete the prescribed period in each grade to qualify for promotion to the next grade. After the introduction of the grade promotion rules, promotion to the supervisory posts such as Vehicle Supervisor, Station Master and Inspector are to be granted according to the seniority which the incumbent had obtained in the immediate lower grade, i.e., Special Grade. Presently promotion as Vehicle Supervisor is being granted only to Drivers who have been holding the post as Special Grade with effect from 27.1.2001. Even though the petitioner's claim that he is senior to Sri.Abdul Rahiman is not disputed, it is contended in para 6 that even though in the gradation list Sri.Abdul Rahiman is junior to the petitioner, actually he entered into service of the Corporation with effect from 18.12.1992 (which is obviously a mistake). Reference seems to be to the date on which Sri.Abdul Rahiman was given Special Grade. It is contended that while Sri.Abdul Rahiman was holding the post of Driver Special Grade with effect from

18.12.2000, the petitioner was promoted as Special Grade Driver only with effect from 24.2.2001 only. Seniority of Special Grade Driver is to be considered for promotion as Vehicle Supervisor and not seniority as Driver on the basis of his entry in service. This contention is obviously made on the basis of the conciliation agreement dated 2.2.1987. The counter affidavit concludes by contending that the petitioner's claim for promotion to the post of Vehicle Supervisor can only be considered taking into account his seniority as a Special Grade Driver and not his seniority based on the date of entry in service.

4. Refuting the contentions raised in the counter affidavit and reiterating the grounds raised in the Writ Petition, the petitioner has filed a reply affidavit. It is contended therein that the post of Vehicle Supervisor is a cadre promotion post and seniority for cadre promotions are to be decided on the basis of the advice memo issued by the Public Service Commission in the entry cadre of Driver Grade II.

5. I have heard the submissions of Sri.N.Unnikrishnan, counsel for the petitioner and those of Sri.Johnson P.John, Standing Counsel for the K.S.R.T.C. I had occasion to consider similar claims in the light of similar contentions taken up by the K.S.R.T.C.

6. Rule 27 (c) of Part II of the K.S. & S.S.R. provides as follows:

“(c) Notwithstanding anything contained in clauses (a) and (b) above, the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons are included in the same list of candidates advised, their relative seniority shall be fixed according to the order in which their names are arranged in the advice list.”

Admittedly, going by the date of the effective advice by the P.S.C., the petitioner was senior to respondents 3, 4 and 5. The promotion that he can aspire for and has now been given to respondents 3, 4 and 5 overlooking his claims for promotion is promotion to the post of Vehicle Supervisor which is a cadre promotion. Cadre promotions are to be regulated as per seniority fixed under rule 27(c) of Part II of the K.S. & S.S.R. Even though respondents 3, 4 and 5 were served with notice of this Writ Petition, none of them have come forward to resist this Writ Petition. May be, they are aware that they do not have any valid defence to the grounds raised by the petitioner.

7. Like-contentions raised by the K.S.R.T.C. were repelled by me in W.P.(C) No.12721 of 2005 filed by another Driver in the service of the K.S.R.T.C. The Writ Petition, in my view, is only to be allowed.

8. There will be a declaration that Exts.P6 and P7 are unsustainable in the eye of law since they deny promotion to the post of Vehicle Supervisor to the petitioner even as respondents 3, 4 and 5 who are juniors to the petitioner are being given promotions. There will be a declaration that the petitioner is entitled to be promoted to the post of Vehicle Supervisor before respondents 3, 4 and 5 are promoted and there will be a direction to the 1st respondent to issue necessary orders of promotion to the post of Vehicle Supervisor to the petitioner with effect from the date on which the 3rd respondent onwards were promoted, with all consequential benefits. Reversion of respondents 3, 4 and 5 can be averted by the 1st respondent even by creating supernumerary posts. In any event, the 1st respondent shall ensure that the promotion and consequential monetary benefits which are due to the petitioner on account of the declarations made above are given to him within two months of receiving copy of this judgment.

The Writ Petition is allowed as above. No costs.

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(PIUS C. KURIAKOSE, JUDGE)

